

Appendix

STATUTES OF CALIFORNIA PROVIDING FOR MERGER OF CORPORATIONS.

Civil Code of California, Sec. 361:

"MERGER AND CONSOLIDATION OF CORPORATIONS. Any two or more corporations may be (a) merged into one of such constituent corporations, which is herein designated as 'the surviving corporation,' or (b) consolidated into a new corporation, which is herein designated as 'the consolidated corporation,' as follows:

(1) The board of directors of each corporation by resolution shall approve an agreement which shall set forth the terms and conditions of merger or consolidation, and the mode of carrying the same into effect, as well as the manner and basis of converting the shares of the constituent corporations into the shares of the consolidated or surviving corporation. The agreement also may provide for the distribution of cash, property, or securities, in whole or in part, in lieu of shares, to shareholders of the constituent corporations or any class of them; * * *."

(2) (Agreement to be signed by designated officers and acknowledged.)

"(3) The agreement must be approved by the vote of the holders of not less than two-thirds of the issued and outstanding shares of each class * * * of each of the constituent corporations * * *."

(*Certificate, contents.* President or vice-president and secretary or assistant secretary of each corporation to execute a certificate, verified, setting forth time and place

of the meeting of the board of directors and of the shareholders, a copy of the resolution there adopted, the vote in favor of such resolution and similar matters.)

“(5) *Filing of agreement.* The agreement so approved, executed and acknowledged and the certificates of its approval shall be filed with the secretary of state, and shall thereupon become effective, and the several parties thereto shall be one corporation * * *.”

“(7) Upon the merger or consolidation, as provided herein, the separate existence of the constituent corporations shall cease, except that of the surviving corporation in case of merger, and the consolidated or surviving corporation shall succeed, without other transfer, to all the rights and property of each of the constituent corporations, and shall be subject to all the debts, and liabilities of each * * *.”

Civil Code of California, Sec. 361a:

“CONSOLIDATION OR MERGER OF DOMESTIC AND FOREIGN CORPORATIONS. The merger or consolidation of any number of domestic corporations with any number of foreign corporations may be effected if such foreign corporations be authorized by the laws of the State or government under which they are formed to effect such a merger or consolidation * * *.”

“The agreement of consolidation or merger, in addition to any filing required by the laws of the States of incorporation of any of the constituent corporations other than this State, shall be filed as required by the laws of the State of incorporation or proposed incorporation of the surviving or consolidated corporation and if such

State is a State other than this State a copy of the agreement, certified by the Secretary of State, or corresponding officer of the State of original filing, shall be filed in the office of the Secretary of State of this State * * *. With respect to any constituent domestic corporation or corporations the provisions of section 361, Civil Code, shall apply to the merger or consolidation and the effect thereof in so far as such provisions are not inconsistent with this section."

**STATUTES OF DELAWARE PROVIDING FOR
MERGER OF CORPORATIONS.**

Corporation Law of Delaware, Sec. 59.

(Revised Code of Del. (1935), Sec. 2091):

"Any two or more corporations * * * existing under the laws of this State * * * may consolidate or merge into a single corporation * * * by means of such consolidation or merger as shall be specified in the agreement hereinafter required; the directors, or a majority of them, of such corporation * * * may enter into an agreement * * * prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect, * * * as well as the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation resulting from or surviving such consolidation or merger * * *."

"Said agreement shall be submitted to the stockholders of each constituent corporation * * * and the agreement so certified and acknowledged shall be filed in the

office of the Secretary of State, and shall thence be taken and deemed to be the agreement and act of consolidation or merger of the said corporations * * *.

Any one or more corporations * * * existing under the laws of this State, may consolidate or merge with one or more other corporations organized under the laws of any other state * * *, if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger." (Here follow provisions, similar to those quoted above, for the making, authorization, filing in both states, and effect of such agreement.)

Sec. 60. (Revised Code of Del. (1935), Sec. 2092.) (This section provides that, upon the signing, acknowledgment, filing and recording of the agreement, the separate existence of the constituent corporations, except the one into which another or others have been merged, shall cease, and all rights, franchises and property of each of the corporations shall be vested in the surviving one.)

U. S. INTERNAL REVENUE CODE.

Sec. 1800. IMPOSITION OF TAX.

"There shall be levied, collected, and paid for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in sections 1801 to 1807, inclusive, or for or in respect of the vellum, parchment, or paper upon which such instrument, matters, or things, or any of them, are written or printed, the several taxes specified in such sections.

Sec. 1802. CAPITAL STOCK (AND SIMILAR INTERESTS).

(b) *Sales and Transfers*—On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subsection (a), or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such shares, certificate, interest, or rights, or not)

TREASURY REGULATIONS 71.

Art. 35. SALES OR TRANSFERS NOT SUBJECT TO TAX.—The following are examples of transactions not subject to the tax:

(d) The surrender of the stock of the consolidating corporation in exchange for stock in the consolidated corporation, in the case of consolidation of two or more corporations.

(e) The transfer of the stock of a merged corporation in exchange for stock of the merging corporation at the time and as a part of a statutory merger, and the substitution of new certificates for the certificates representing the old stock of the merging corporation.

(f) The surrender of stock for extinguishment or in exchange for new certificates to be issued without change of legal title.

(g) The transfer of stock from the decedent to the administrator or executor of the estate.

(h) The transfer of stock from the name of a deceased or resigned trustee to the name of a substituted trustee appointed in accordance with the terms of the original trust agreement, which is a transfer resulting wholly by operation of law.

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(r) Transfers of shares or certificates of stock which result wholly by operation of law are not subject to the tax. Transfers of this character are those which the law itself will effect without any voluntary act of the parties, such as transfer of stock from decedent to executor.